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IN THE

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Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child,  
RITA NELL VINCENT,

*Appellant,*

—against—

SIMON VINCENT, Administrator of the Succession of  
EZRA VINCENT,

*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION FOR LEAVE TO FILE BRIEF, *AMICUS CURIAE*, AND BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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IN THE

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OCTOBER TERM, 1970

**No. 5257**

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LOU BERTHA LABINE, Natural Tutrix of Minor Child,  
RITA NELL VINCENT,

*Appellant,*

—against—

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EZRA VINCENT,

*Appellee.*

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ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

---

**Motion of American Civil Liberties Union for Leave to  
File Brief, *Amicus Curiae***

Pursuant to Rule 42(3) of the Rules of this Court, the American Civil Liberties Union respectfully moves for leave to file a brief *amicus curiae* in the above-entitled case. The attorney for appellant has consented to the filing of the attached brief.<sup>1</sup> The attorney for appellee did not reply to the request for consent.

The American Civil Liberties Union has a long-standing institutional interest in protecting the constitutional rights of children, legitimate and illegitimate. Attorneys of the American Civil Liberties Union appeared before this Court in recent years to argue *In Re Gault*, 387 U.S. 1

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<sup>1</sup>The letter of consent has been filed with the Clerk of the Court.

(1967) and *Levy v. Louisiana*, 391 U.S. 68 (1968). The former decision held that children involved in juvenile proceedings were entitled to a wide range of constitutional protections in such proceedings. The latter decision held that illegitimate children were entitled as a constitutional matter to pursue an action for money damages incurred by the wrongful death of their natural mother.

The case at bar draws into question the right of an illegitimate child to inherit from her natural father. The question is a complex one which involves construction of the equal protection clause of the Fourteenth Amendment. We believe that our brief, written principally by two scholars who have engaged in litigation involving questions closely related to the one at issue in this case, and who have also written extensively in professional journals on those questions, will be of substantial assistance to the Court.

Respectfully submitted,

MELVIN L. WULF  
*Attorney for Movant*

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1970  
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LOU BERTHA LABINE, Natural Tutrix of Minor Child,  
RITA NELL VINCENT,  
*Appellant,*  
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ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

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**BRIEF OF AMERICAN CIVIL LIBERTIES UNION,  
*AMICUS CURIAE***

---

**Interest of *Amicus Curiae***

The interest of *Amicus Curiae* is set out in the Motion for Leave to File, *supra*.

**The Question Presented**

Whether Louisiana's statutes, Civil Code Articles 206, 919 (1870), which deny a minor illegitimate child who was acknowledged by his father during the latter's lifetime a right to inherit from his father but would, solely on the basis of the criterion of legitimacy, pass the father's inheritance to collateral legitimate relatives, are unconstitutional and therefore invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

### **Statement of the Case**

The decedent Ezra Vincent died intestate. He left no spouse, ascendants, nor legitimate descendants. He was survived only by his illegitimate daughter, Rita Nell Vincent, and collateral relatives. The latter seek to inherit from him to the exclusion of the illegitimate daughter under Louisiana Civil Code Articles 206, 919 (1870). Decedent's daughter had been formally acknowledged by him by notarial act during his lifetime in accordance with Louisiana law.

The lower court held that the acknowledged illegitimate child had no right to inherit from her father and was not entitled to support from his estate. *In Re Vincent*, 229 So.2d 449, 452 (La. Ct. App. 1969). This appeal was taken from this judgment.

### **ARGUMENT**

#### **I.**

##### **The Louisiana laws in issue are unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.**

The Louisiana court reasoned that the state has "great latitude in making classifications," especially in the area of descent and distribution, which it viewed as "peculiarly within the powers reserved to the states." *In Re Vincent*, 229 So.2d 449, 451 (La. Ct. App. 1969). The principle that a state has great latitude in making classifications in the economic area is conceded. It does not extend, however, to matters involving a "fundamental right and liberty"

or a "basic civil right of man." Regulations infringing that area will be scrutinized strictly. *Harper v. Virginia Board of Elections*, 383 U.S. 663, 669, 670 (1966); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). When fundamental rights are involved, even a rational relationship between the regulation and a permissible legislative purpose of the state may not suffice to uphold the regulation. Instead, the presumption of constitutionality normally accorded state enactments is reversed, McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 Mich. L. Rev. 645, 666, 667 (1963), and the regulation will stand only if it is "necessary to promote a compelling governmental interest," *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

The illegitimate child is claiming a "fundamental right or liberty" or "a basic civil right of man."<sup>1</sup> The child's interest in a legal relationship with its father goes far beyond economics, although it has economic incidents of which inheritance is one. The child's claim centers on his father and extends to his second-class status in our society—a society in which illegitimacy is a "psychic catastrophe"<sup>2</sup>

<sup>1</sup> The illegitimate's demand for relief from discrimination has gained world-wide recognition as a basic human right. In January, 1967, a subcommission of the Commission on Human Rights of the United Nations adopted a statement on "General Principles on Equality and Non-Discrimination in Respect of Persons Born Out of Wedlock" which demands that "every person, once his filiation has been established, shall have the same legal status as a person born in wedlock." Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, United Nations Economic and Social Council, *Study of Discrimination against Persons Born out of Wedlock: General Principles on Equality and Non-Discrimination in Respect of Persons Born out of Wedlock*, U.N. Doc. E/CN. 4 Sub. 2/L 453 (13 Jan. 1967).

<sup>2</sup> "In the case of illegitimate birth the child's reactions to life are bound to be completely abnormal . . . To be fatherless is hard

and in which recovery in tort is granted for a false allegation of illegitimacy.<sup>3</sup> Indeed, the psychological effect of the stigma of bastardy upon its victim<sup>4</sup> is comparable to the damaging psychological effects upon the victims of racial discrimination.

The analogy to racial discrimination goes deeper. Although illegitimacy, on its face, seems to be a neutral

enough, but to be fatherless with the stigma of illegitimate birth is a psychic catastrophe." Fodor, *Emotional Trauma Resulting From Illegitimate Birth*, 54 ARCHIVES OF NEUROLOGY AND PSYCHIATRY 381 (1945).

<sup>3</sup> The following is an abbreviated list of defamatory epithets compiled in a leading textbook on torts: ". . . immoral or unchaste, or 'queer' . . . a coward, a drunkard, a hypocrite, a liar, a scoundrel, a crook, a scandalmonger, an anarchist, a skunk, a bastard, a eunuch . . . because all of these things obviously tend to affect the esteem in which he is held by his neighbors." Prosser, *Torts*, 757-58 (3rd ed. 1964).

<sup>4</sup> In Jenkins, *An Experimental Study of the Relationship of Legitimate and Illegitimate Birth Status to School and Personal and Social Adjustment of Negro Children*, 64 AM. J. SOCIOLOGY 169 (1958), the author investigated whether there were significant differences in the "adjustment" of legitimate and illegitimate Negro school children. All children in the (unfortunately rather small) sample were recipients of Aid to Dependent Children's funds and otherwise lived in comparable economic and social circumstances. "Adjustment" was considered to be reflected in I.Q., age-grade placement, school absences, academic grades, teacher's rating, and personal and social adjustment as measured by the California test of personality. Jenkins reported that:

"Two primary patterns emerged in this study. First, the legitimate children rated higher in every area except school absences . . .

The second discernible pattern was that the older group of illegitimate children consistently made a poorer showing than the younger group, in comparison with the legitimate children. A possible explanation for this is that, as these children grow older and are able to internalize fully the concept of illegitimacy and as they become increasingly aware of their socially inferior status, their adjustment to self and society may become progressively less satisfactory." *Id.* at 173.

criterion, it actually operates far more severely upon Negroes as a class than it does upon whites. First, disproportionately more black children than white children are born out of wedlock. The black illegitimacy rate recently stood at a national average of 29.4 percent, whereas the white rate stood at 4.9 percent. U. S. News and World Report, March 30, 1970 at 30. This means that our law of illegitimacy has the effect of denying more than one in four black children a legal relationship with its father. Second, a far higher percentage of white illegitimate than black illegitimate find parents through adoption. The white adoption rate has been estimated to be 70 percent whereas the black adoption rate ranges between 3 and 5 percent. *Bureau of Public Assistance, U. S. Department of Health, Education, and Welfare, Illegitimacy and its Impact on the Aid to Dependent Children Program* 35-36 (1960); cf. Hylton, *Trends in Adoption 1958-1962*, 44 *Child Welfare* 377 (1965). This means that an overwhelming percentage of children affected by laws discriminating on the basis of illegitimacy are black—and it is thus no coincidence that the children involved in *Levy* and in this case are black. In the brief for the N. A. A. C. P. **LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AND NATIONAL OFFICE FOR THE RIGHTS OF THE INDIGENT** as Amici Curiae at 20, *Levy v. Louisiana*, 391 U.S. 68 (1968), this matter was illustrated pointedly:

“Applying the national percentage on white adoptions (70%) and non-white adoptions (4%) to the 1965 Louisiana illegitimacy figures (1,158 white, 8,276 Negro); only 347 white children remain unadopted, whereas 7,945 Negro children remain unadopted. *This means that 95.8 percent of all persons affected by the*

*operation of the Louisiana Wrongful Death Act are Negroes.* For all practical purposes this means that the criterion of illegitimacy as used under the Louisiana Wrongful Death Act is synonymous with a racial classification."

In this light it is plain that the case should be governed by the standard set forth in *Shapiro*. Compare *Levy v. Louisiana*, 391 U.S. 68, 71 (1968), where the Court termed the criterion of illegitimacy "invidious" and spoke of the "intimate, familial relationship between [an illegitimate] child and his own mother."

This Court has explained that "[i]n determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969). In terms of this test, the Louisiana court's references to state policies that supposedly justify the discrimination are wholly unconvincing. In that court's view, two reasons justify discrimination against the illegitimate child under the inheritance statute. First, the discrimination "may within the legislative discretion properly have a tendency to encourage marriage and discourage illegitimacy, valid social aims of the state." The court's second point concerned the potential ill effect that a decision allowing the illegitimate child to inherit might have on "the stability of . . . land titles and [on] the prompt and definitive determination of the valid ownership of property left by decedents." *In Re Vincent*, 229 So.2d 449, 452 (La. Ct. App. 1969).

The first argument has been answered by this Court. As the court below acknowledged, this Court has held that discrimination in terms of a child's wrongful death claim cannot be supported on the ground that it encourages marriage and discourages illegitimacy. *Levy v. Louisiana*, 391 U.S. 68 (1968); *Glona v. American Guarantee & Liability Ins. Co.*, 391 U.S. 73 (1968). The Louisiana court's attempt to distinguish between a recovery for wrongful death and inheritance in terms of their impact on encouragement of marriage and discouragement of illegitimacy is implausible on its face. Not only does the *distinction* fail, but the argument that discrimination on the basis of illegitimacy is effective to discourage illegitimacy and encourage marriage is in and of itself mistaken, as the rising statistics on illegitimacy demonstrate amply.

In short, it is folly to suppose that potential illegitimate parents would be deterred from their illegitimate conduct because of the treatment the law has in store for their child. But even if an effective connection existed between the legislated stigma of illegitimacy and the state's purpose of encouraging marriage and discouraging promiscuity, that connection would not be *reasonable* in terms of the constitutional tests of due process and equal protection. It makes no sense to punish an innocent non-party for someone else's undesirable conduct. In *Levy*, the discrimination was held "invidious" because "no action, conduct, or demeanor of [the illegitimate children] is possibly relevant to the harm that was done the mother." *Levy v. Louisiana*, 391 U.S. 68, 72 (1968). In his concurring opinion in *Smith v. King*, 392 U.S. 309, 336 (1968), Justice Douglas expressed this point even more strongly when he compared the stigma of illegitimacy to the "archaic corruption of the blood, a form

of bill of attainder." Analogies also may be drawn to recent Supreme Court decisions involving alcoholics and drug addicts which suggest that punishment cannot constitutionally be imposed for a condition or status over which the individual has no control. *Robinson v. California*, 370 U.S. 660 (1962); cf. *Oyama v. California*, 332 U.S. 633 (1948).<sup>5</sup>

The Louisiana court's second argument merits a closer look. The court felt that the discrimination against the illegitimate child in its inheritance rights

"might aid to avoid the disruptions and uncertainties [likely] to result from unknown and not easily ascertained claims through averments of parentage, bona fide or otherwise, as to a decedent no longer present to disprove them." *In Re Vincent*, 229 So.2d 449, 452 (La. Ct. App. 1969).

In fairness to the lower court, it should be observed that it recognized that this argument did not apply in the circumstances before it. Here the decedent had expressly acknowledged his illegitimate child during his lifetime. The question of paternity was not in issue. It seems impossible to comprehend how the lower court could have decided *this case against this child* on the basis of the argument that in some other case involving some other child paternity might be uncertain.

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<sup>5</sup> See generally Gray & Rudovsky, *The Court Acknowledges the Illegitimate: Levy v. Louisiana and Glona v. American Guarantee & Liability Insurance Co.*, 118 U. Pa. L. Rev. 1 (1969); Krause, *Legitimate and Illegitimate Offspring of Levy v. Louisiana—First Decisions on Equal Protection and Paternity*, 36 U. Chi. L. Rev. 338 (1969).

However inapplicable to the facts before the court, this line of reasoning has broad historical implications. Blackstone and others before and after him had thought that the uncertainty of illegitimate paternity justified inferior rights for the illegitimate. *I. W. Blackstone, Commentaries on the Laws of England* 429 (Lewis ed. 1922). The dissenting opinion in *Levy* was concerned with the same question:

"[F]or many of the same reasons why a State is empowered to require formalities in the first place, a State may choose to simplify a particular proceeding by reliance on formal papers rather than a contest of proof. That suits for wrongful death, actions to determine the heirs of intestates, and the like, must as a constitutional matter deal with every claim of biological paternity or maternity on its merits is an exceedingly odd proposition." *Levy v. Louisiana*, 391 U.S. 68, 80-81 (1968) (footnotes omitted).

Of course it is true that, *on the average*, illegitimate birth furnishes less convincing evidence of paternity than does birth in wedlock. But if this be so, the answer still is that even if, *on the average*, it is more difficult to trace illegitimate than legitimate paternity, a court and the law do not deal with averages. They decide individual cases. The fact that uncertainty may exist in one illegitimate paternity case and may justify a denial of recovery, is not to say that uncertainty exists in another case. Legislation is not rational if it accepts only one type of proof of paternity (marriage) and categorically excludes all other equivalent proof of parentage, such as the father's unequivocal, undisputed and formal acknowledgment of his child (as is present in this case). In short, as in other disputed fact situa-

tions, recovery should be denied if there is no proof of paternity, but granted if there is. It should be emphasized here that modern scientific methods of ascertaining paternity have moved the ascertainment of paternity far beyond speculation.\*

The argument concerning uncertainty of illegitimate paternity has another dimension. It might be said that, since illegitimate *paternity*, in general, is more difficult to ascertain than illegitimate *maternity*, *Levy* and *Glona* (which involved maternal descent) are distinguishable from cases involving paternal descent (such as this case). Indeed, it may be that there are valid reasons to distinguish the mother-child relationship from the father-child relationship *for some purposes* (although it is difficult to see how, with respect to the right of inheritance, such a distinction could be maintained). Analyzed accurately, however, the illegitimate's claim against his father does not rest on an analogy to his claim against his mother. Rather, the illegitimate's claim against his father rests on comparison with the legitimate child's rights against its father, just as the illegitimate's claim against his mother rests on comparison with the *legitimate* child's rights against its mother. Specifically,

\* See, e.g., L. SUSSMAN, BLOOD GROUPING TESTS—MEDICOLEGAL USES (1968); Henningsen, *Some Aspects of Blood Grouping in Cases of Disputed Paternity in Denmark*, 2 METHODS OF FORENSIC SCIENCE 209 (1963). This is not to say that a legislature could not set a reasonable standard of proof of paternity. On the contrary, it would be desirable if the legislature would set a satisfactory, rational standard of proof of paternity in the very state interest the dissenting opinion in *Levy* invokes—the interest “to simplify a particular proceeding by reliance on formal papers rather than a contest of proof.” *Levy v. Louisiana*, 391 U.S. 68, 80 (1968). But the legislature has not done so here, nor are there many examples of other legislatures that have established a rational standard of proof of paternity.

it rests on the answer to the question whether legislation denying to the illegitimate rights against his father (or mother) that are granted to children of legitimate birth is related to a proper public concern with respect to which legitimate and illegitimate children are not situated similarly. This question is the proper issue in these cases.

It was answered in the *Levy* case with regard to the child's relationship to his *mother* to the effect that no proper legislative purpose justifies discrimination between legitimate and illegitimate children. The extension of *Levy* to the father-child relationship therefore must rest on the result of an inquiry as to (1) whether there are legislative purposes which support discriminatory legislation in the father-child context that are not present in the mother-child context, and (2) whether such other or additional purposes pass the test of the Fourteenth Amendment.

There are no such purposes. See Krause, *Equal Protection for the Illegitimate*, 65 Mich. L. Rev. 477, 489-500 (1967). Instead, it is clear that our long continued acceptance of legislatively enforced inequality between legitimate and illegitimate children rests on much the same ground as did the inferior position of women, Negroes, and other classes through the centuries—prejudice. There has been a long history of discrimination against the illegitimate. This very history of discrimination was invoked by the Louisiana court in justifying its holding against the child. *In Re Vincent*, 229 So.2d 449, 452 (La. Ct. App. 1969). Much of the discrimination may be traced to the medieval Church which, in both its concern for the divorceless family and its aversion to illicit sex, reinforced the father, whose self-interest may ultimately have been most directly re-

sponsible for the situation of the illegitimate. It was only human for men, as legislators, to limit their accidental off-springs' claims against them, economically and in terms of a family relationship.

The issue of inheritance, of course, may arise in a variety of contexts. In certain factual settings, legislated discrimination between children may be justifiable or even desirable. For example, an intestacy statute that first assured the continued support of a minor child before passing inheritance to an adult child of the deceased probably would represent a valid exercise of legislative discretion. But to agree with the principle that *some* discrimination involving inheritance rights might be constitutionally supportable in *some* factual settings says nothing about this case. Here, the contest is between a minor child of the deceased father and the father's collateral relatives. No wife of the decedent and no legitimate child of his is in the picture. No matter how broad a view might be taken of the state's power and discretion to classify, the law under attack is patently unreasonable when it gives this man's inheritance to his collateral relatives and denies it to his own acknowledged minor child.<sup>7</sup>

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<sup>7</sup> A number of other states allow the illegitimate to inherit from his father under various conditions. E.g., ARIZ. REV. STAT. ANN. § 14-206B (1956); CAL. PROB. CODE § 255 (West Supp. 1968); FLA. STAT. ANN. § 731.29 (1964); IDAHO CODE ANN. § 14-104 (1948); see generally Krause, Bringing the Bastard into the Great Society, A Proposed Uniform Act on Legitimacy, 44 Tex. L. Rev. 829, 854-56 (1966).

**II.****A decision in favor of the illegitimate child would be consistent with modern legislative trends.**

While substantial discrimination continues to limit the legal relationship between a father and his illegitimate child, newer laws have become increasingly considerate of the child's interests. Where there has been modern legislation on illegitimacy, it has reduced the impact of the ancient doctrine of *filius nullius*. Support rights against his father today are available to the illegitimate in most though not in all states. Paternal inheritance is available to him in several jurisdictions. Worth noting in this context is a new law passed in North Dakota in the wake of *Levy* and *Glona*:

"Every child is hereby declared to be the legitimate child of his natural parents, and is entitled to support and education, to the same extent as if he had been born in lawful wedlock. He shall inherit from his natural parents, and from their kindred heir, lineal and collateral." N.D. Cent. Code § 56-01-05 (1969 Supp.).

Another development of considerable interest is that at its meeting in Dallas in 1969, the National Conference of Commissioners on Uniform State Laws approved the Uniform Probate Code, which gives the illegitimate child inheritance rights equal to that of his legitimate brother. It provides as follows:

**§ 2-109:**

"If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through or from a person,

(a) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent shall have no effect on the relationship between the child and his natural parents.

(b) In cases not covered by (a), a person born out of wedlock is a child of the mother. That person is also a child of the father, provided;

(1) The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(2) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (2) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

**COMMENT:** The definition of "child" and "parent" in Section 1-201 incorporates the meanings established by this section, thus extending them for all purposes of the Code.

Years earlier, the National Conference of Commissioners on Uniform State Laws had gone on record in § 1 of the Uniform Paternity Act, 9B Uniform Laws Ann. 155 (Supp. 1964), in favor of full equality between legitimate children in terms of their right of paternal support. Currently, the National Conference's Committee on a Uniform Legitimacy Act is drafting legislation that will carefully regulate the

important question of ascertainment of paternity and reaffirm the equality of rights of support and inheritance previously promised by the Conference. Uniform Legitimacy Act, First Tentative Draft, National Conference of Commissioners on Uniform State Laws, June 1, 1970.

### **CONCLUSION**

**For the reasons stated above, the judgment below should be reversed.**

Respectfully submitted,

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November 27, 1970



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U. S. DISTRICT COURT, U. S.

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R. ROBERT SEAY, CLERK

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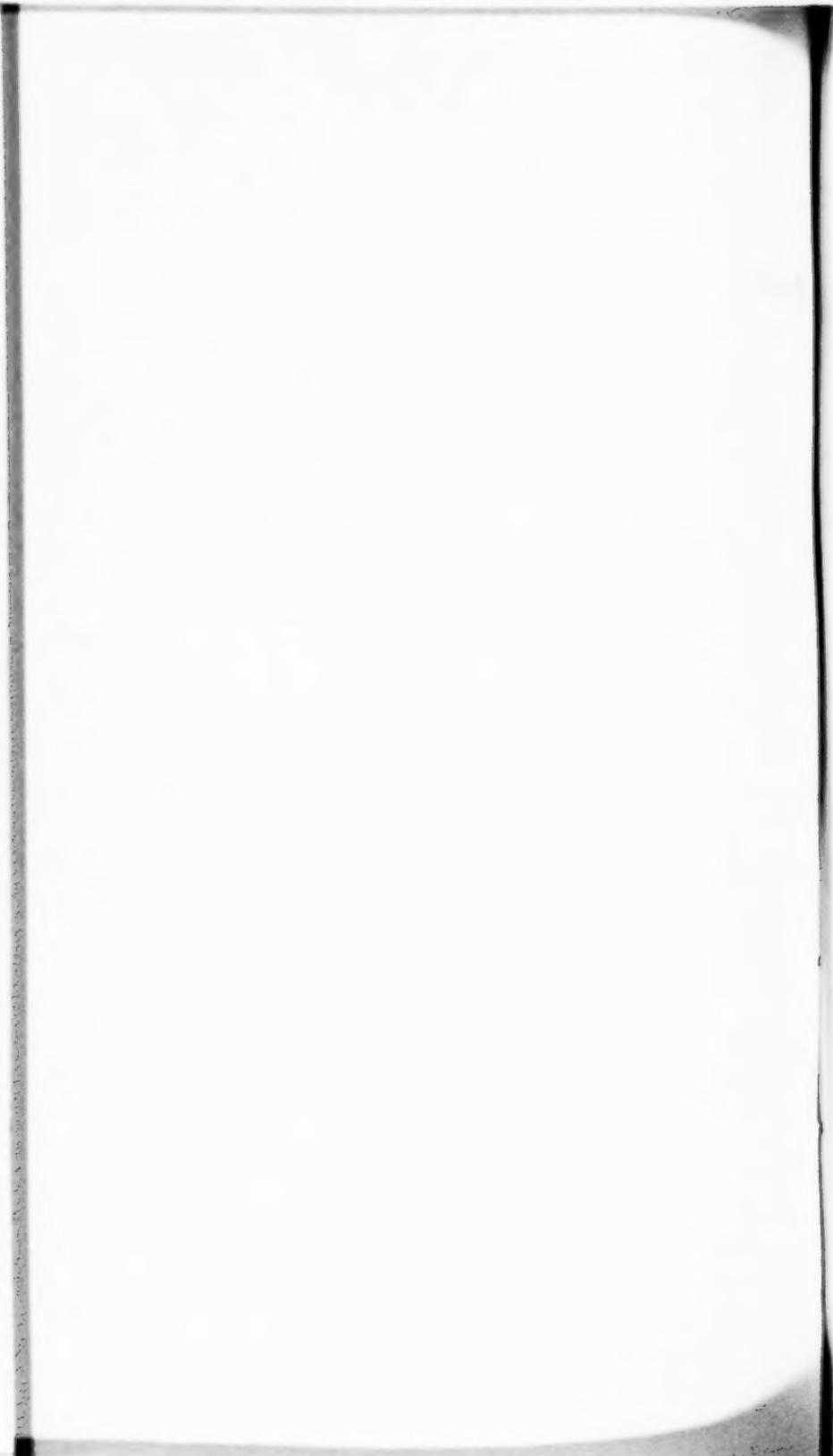
**BRIEF OF ATTORNEY GENERAL FOR THE  
STATE OF LOUISIANA**

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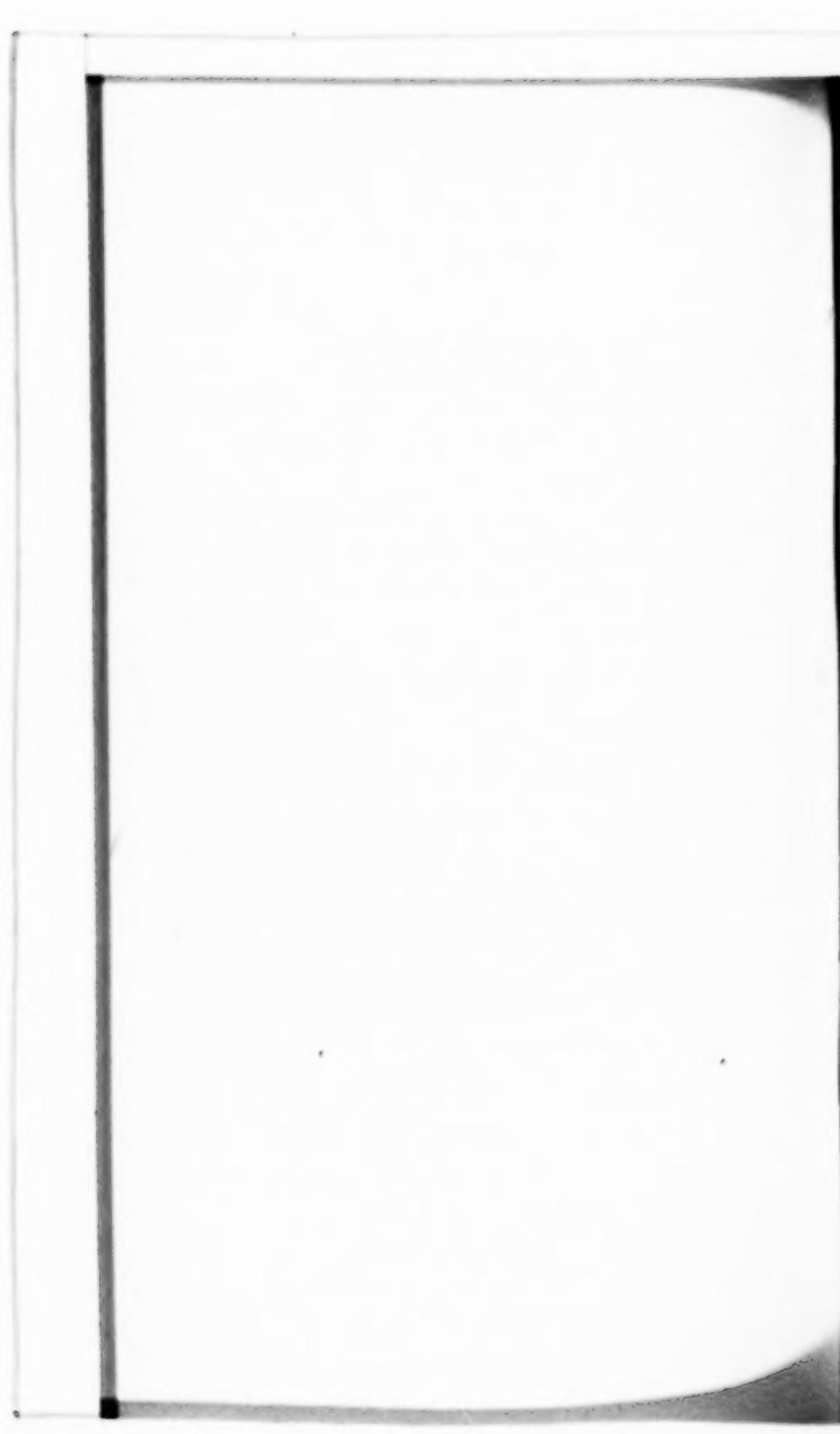


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In the  
Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

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LOU BERTHA LABINE, Natural Tutrix of Minor Child,  
Rita Nell Vincent,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of  
Ezra Vincent,

Appellee.

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On Appeal From the Supreme Court of Louisiana

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BRIEF OF ATTORNEY GENERAL FOR THE  
STATE OF LOUISIANA

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INTEREST OF AMICUS CURIAE

The Attorney General of Louisiana is interested in seeing that the constitutionality of the statutes and laws of the State are upheld as being constitutional.  
(Art. 7, Sec. 56, 1921 La. Const.)

STATEMENT OF THE CASE

An illegitimate child is claiming the estate of her father as against his legitimate brothers and sisters. The decedent, Ezra Vincent, died intestate. The District Court and the Court of Appeal of Louisiana followed the provisions of the Louisiana Civil Code Arti-

cles 206 and 919, and held that the illegitimate daughter could not inherit from her father since he left legitimate collateral relations. *In Re Vincent*, 229 So.2d 449 (La. Ct. of App. 1969).

### STATEMENT OF ISSUES

- I. Do the Articles of the Louisiana Civil Code making a distinction between the rights of inheritance of legitimate and illegitimate children violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution?
- II. Should the regulation of descent of property rights and inheritance be a matter of State law, or should it be controlled by the Federal Judiciary?
- III. Should the decisions in *Levy v. Louisiana* and *Glona v. American Guaranty and Liberty Insurance Company* be extended from the field of torts to apply also to Louisiana succession laws, and upset the orderly transmission of a decedent's estate?

### ARGUMENT

#### I.

The articles of the Louisiana Civil Code making a distinction between the rights of inheritance of legitimate and illegitimate children do not violate the due process and equal protection clauses of the Fourteenth amendment to the United States Constitution

The Attorney General of Louisiana has no personal interest in the outcome of this litigation. It is

solely the purpose of the State of Louisiana to uphold its laws and statutes as being constitutional. We respectfully point out that the Civil Code of Louisiana, among other things, governs the inheritance of property in both testate and intestate successions. The Civil Code was adopted in 1808 and follows to a great extent the Napoleonic Code with a sprinkling of Spanish law. The principles of laws on successions in Louisiana have been almost unchanged for more than 150 years. Actually, we are informed that the Napoleonic Code was based to some extent at least on the Code of Justinian of Ancient Rome. The Louisiana Codal articles on descent, distribution and inheritance are based upon the civil law concepts. These laws obviously do favor legitimate children over illegitimate children. These laws strengthen the idea of a family unit to discourage the promiscuous bearing of children out of wedlock. Whether this is good or bad it seems is a sociological question and not a legal one.

In this brief, we will not make any effort to cite a great many authorities. We believe that the brief of the appellee, the Administrator of the Succession of Ezra Vincent, covers the legal questions fully, far better than we could do in the limited time allowed us. We strongly urge, however, that the Louisiana laws governing descent and distribution of the property of a decedent do not violate the Fourteenth Amendment to the United States Constitution. Our statutes are based upon a rational and justifiable basis, beginning with Article 27 of the Civil Code, which provides, "Children are legitimate or illegitimate. Legitimate children are

those who are born of a marriage lawfully contracted; and illegitimate children are such as are born of an illicit union."

The Code then recognizes a distinction between illegitimates themselves, i.e., first those who are born of persons who could have married at the time of conception, and those who were not legally capable of marriage (Article 181). The Code then provides for legitimation of the child by subsequent marriage of the parents (Article 198), giving the child the same rights as if he were born of the marriage (Article 199). Further, Louisiana laws provides that a child may be adopted and accorded the identical rights as if a child of the marriage (Article 214).

All of these provisions are based on the proposition that the family is a critical unit of society and tend to encourage marriage and family ties. It is submitted that these laws are rational and not arbitrary. They are just and not prejudicial to anyone. Under the guidelines for determining a violation of the equal protection clause as set forth in *Morey v. Doud*, 354 U.S. 457, clearly this law is not in violation of the United States Constitution.

## II.

**The Regulation of inheritance is a matter of state law and is not the subject of federal judicial action where such laws are not clearly confiscatory and have a reasonable basis**

We have read with a great deal of interest the brief as an amicus curiae filed herein by the American

Civil Liberties Union. This brief attempts to inject a racial issue into this matter. Race is *not* an issue in this case. If the appellant had been white, black or yellow, the law would have treated her just the same. Apparently in search of an inflammatory issue, the American Civil Liberties Union quotes certain numerical calculations and statistics that lead to the astounding conclusion that the Louisiana law of descent and distribution discriminates against the Negro race. This is based upon the alleged statistic that twenty-nine percent of Negro children are illegitimate and only four percent of the white children are illegitimate. Following this argument to its logical conclusion, it could be argued that if twenty-nine percent of robberies are committed by Negroes and only four percent by whites, then the laws against robbery are discriminatory and unconstitutional.

The State of Louisiana urges this Honorable Court to recognize that the racial issue is irrelevant in this case, and to take cognizance of the fact that the laws of Louisiana herein attacked can be traced back centuries to the most respected judicial codes of the world. The argument that these laws are designed for racial discrimination is absolutely without merit. It is submitted that the Louisiana laws on descent and distribution and inheritance are not in conflict with any portion of the United States Constitution. These laws have a reasonable basis, and they are concerned with the health, morals and welfare of the citizens of Louisiana. Many millions of dollars in property have been transmitted under these laws, which have been thoroughly

interpreted by the Courts of Louisiana over a period of more than a century and a half.

If the Court should hold that appellant in the instant matter is entitled to inherit from her father, it will open Pandora's Box. We will have litigation for years to come, which will be most unsettling to titles and property throughout the State of Louisiana. For example, if an illegitimate child is entitled to inherit from her father today, then she would have been entitled to inherit from him five years ago, or ten years ago, or maybe twenty years ago. No title to land will be secure.

Again, if an illegitimate child inherits ahead of brothers and sisters of its father, will the illegitimate child inherit ahead of legitimate children, or equally with legitimate children? Where a father and mother have reared three legitimate children in their home for years, and the father dies, suppose four or five illegitimate children come forward and claim their share of his estate. Is this fair to his legitimate family who may have never heard of these other offspring? Again, should a distinction be made between illegitimate children that the father acknowledged as his and illegitimate children who were never acknowledged by the father, who would have to prove their parenthood through other means.

The State of Louisiana respectfully represents to this Court that to hold in favor of this illegitimate child would involve consequences that could threaten the title to every piece of property in the State of Louisiana. The laws of inheritance must be certain and should

follow the statutes, and not be subject to the decisions of individual courts in individual cases.

There is an old adage that "Hard cases make bad law". Remember that the decision in this matter will have far-reaching effects which inevitably will go far beyond the narrow confines of this particular matter. The State of Louisiana urges this Court to affirm the decisions of the Louisiana State Courts.

### III.

**The holdings of Levy and Glona should be applied strictly to tort cases, i.e., to the question of the right to damages for an unlawful death**

There is, of course, an obvious reason for the holdings in both *Levy* and *Glona*. In one case, the children suffered a severe loss of love and affection and financial support where a mother was killed. Although the children were illegitimate, the mother was their sole support and was caring for them. They suffered a financial loss when she was killed and should be entitled to reimbursement. Similarly, in the *Glona* case, a mother suffered a loss of at least love and affection on the death of her child. It must be pointed out that there were no legitimate children in either matter and, therefore, no conflict.

We strongly urge that the holdings in *Levy* and *Glona* should be limited to the factual situations there presented, i.e., the question of damages for the actual loss of love and affection and loss of support and maintenance. However, we urge that the doctrine that an illegitimate child is entitled to damages because of

the illegal death of its mother, should not be extended to hold that an illegitimate child is entitled to inherit the estate of its father where the evidence in the case showed that the child was not being supported by its father. Louisiana laws do provide for alimony or support of an illegitimate child when the necessity is proved (Civil Code Art. 919). The Courts in the instant case, however, found that the illegitimate child, claimant herein, did not need support since she was already receiving two monthly checks.

### CONCLUSION

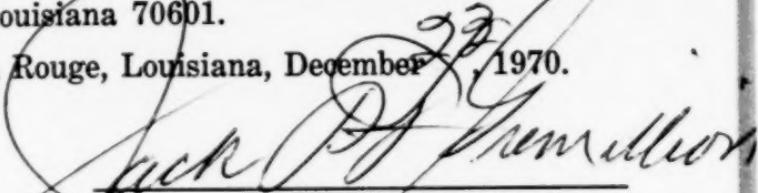
For the reasons stated above, the Judgement of the Court of Appeal of the State of Louisiana should be affirmed.

Respectfully Submitted,  
JACK P. F. GREMILLION,  
Attorney General of Louisiana,  
Louisiana Capitol Building,  
Baton Rouge, Louisiana.

**CERTIFICATE**

I, JACK P. F. GREMILLION, member of the Bar of the Supreme Court of the United States and Attorney General for the State of Louisiana, do hereby certify that copies of the foregoing brief have been deposited this day in the United States mail, postage prepaid, addressed to James J. Cox, Attorney at Law, 702 Kirby Street, Lake Charles, Louisiana 70601, and to Norman F. Anderson and James A. Leithead, 117 West Broad Street, Post Office Box 1299, Lake Charles, Louisiana 70601.

Baton Rouge, Louisiana, December 22, 1970.

  
JACK P. F. GREMILLION,  
Attorney General of Louisiana